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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85179243
Applicant	Nieves & Nieves LLC
Applied for Mark	PRINCESS KATE
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant Reply Brief	Trademark Application
of	Applicant: Nieves & Nieves LLC
Examining Attorney's Appeal Statement	Proposed Mark: PRINCESS KATE
Filed: September 17, 2013	Serial No.: 85179243
	Proceeding No.: 85179243
	Filed: November 17, 2010

**REPLY TO EXAMINING ATTORNEY’S APPEAL BRIEF PART ONE**

Applicant submits the following Ex Parte Appeal Reply, in accordance with TMBP §1203.02(c), to the Trademark Trial and Appeal Board in response to Examiner's Appeal Brief, filed September 17, 2013, by Examining Attorney Suzanne Blane of Law Office 114 (“Examiner”).

**FACTS**

As the Examiner sets forth in the Examining Attorney’s Appeal Brief, the following procedural history is uncontested by Applicant:

“On November 17, 2010, the Applicant filed an application under §1(b) of the Trademark Act for the mark PRINCESS KATE. On February 27, 2011, the Examining Attorney issued an Office Action requiring the Applicant to amend the classification and identification of goods and services and to clarify whether the name PRINCESS KATE identifies a particular living individual. On August 25, 2011, the Applicant submitted an acceptably amended classification and identification of goods and services along with a statement denying that the proposed mark identifies a particular living individual. On September 7, 2011, the Examining Attorney approved publication for opposition of the proposed mark. On October 3, 2013, publication of the proposed mark was withdrawn because further review of the application found the proposed mark, PRINCESS KATE, may falsely suggest a connection with Catherine, Duchess of Cambridge, the wife of Prince William of England. In addition, a second refusal was issued under Section 2(c) because the proposed mark was found to consist of or include a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record.

On October 27, 2011, the Examining Attorney issued an Office action refusing registration of the proposed mark under Sections 2(a) and 2(c) of the Trademark Act. On April 26, 2012, Applicant submitted a response traversing both refusals. On June 30, 2012, the Examining Attorney issued a Final Office action making continuing and making final the refusal of

registration of the proposed mark under Sections 2(a) and 2(c) of the Trademark Act. The Applicant subsequently filed a Notice of Appeal and Request for Reconsideration. The Request for Reconsideration was denied on May 18, 2013. The Applicant filed its brief on July 17, 2013.”

### **ARGUMENT**

With regard to the arguments and analysis the Examiner used in support of her opposition, Applicant believes the Examiner failed to address several key points raised in Applicant's brief, which was filed on July 15, 2013. In addition, Applicant contends that the Examiner interpreted prior case precedent over-broadly, inconsistently, and incorrectly. In light thereof, Applicant respectfully requests that the Trademark Trial and Appeal Board consider the following reply in support of registration of the proposed mark.

In the opening paragraph of the Examiner's false association argument, the Examiner acknowledges that Catherine, Duchess of Cambridge, nee Kate Middleton, is not connected with the goods and/or services provided by Applicant but contends that because the Duchess of Cambridge is so famous, consumers would presume a connection exists, regardless. In order to support the contention that a false association exists under Trademark Act Section 2(a) 15 U.S.C. §1052(a), the Examiner applies the four (4) part test set forth as precedent in *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985). Applicant agrees this is the correct test to apply, however, Applicant does not agree with the Examiner's analysis or interpretation.

In accordance with the holding in *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 198), the following is required for a showing of false connection under Trademark Section 2(a):

1. The mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by another person or institution;
2. The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
3. The person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark; AND
4. The fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods

and/or services.

**REPLY TO EXAMINER'S APPEAL BRIEF IN REGARDS TO THE FIRST PRONG OF THE  
BUFFET TEST**

The Examiner's first analysis section of the four (4) part test to prove false association is titled, "PRINCESS KATE IS A CLOSE APPROXIMATION OF BOTH THE NAME AND IDENTITY PREVIOUSLY USED BY KATE MIDDLETON, OFFICIALLY KNOWN AS CATHERINE, DUCHESS OF CAMBIDGE." However, the Examiner concedes in such section that, "there is no evidence to support Kate Middleton's use of the term PRINCESS KATE in reference to herself..." On its face, the section title and the quoted portion of Examiner's brief appear at odds with one another because Catherine Middleton, Duchess of Cambridge has never identified herself as PRINCESS KATE.

In an attempt to connect the Duchess of Cambridge with the term PRINCESS KATE, the Examiner states that "...the media's pervasive use of the term has created a widespread association of PRINCESS KATE with Kate Middleton." In furtherance of the Examiner's attempt to establish a close approximation of both Catherine Middleton's name and identity with the proposed mark, the Examiner also makes specific note of the fact that Catherine Middleton identifies herself by the nickname Kate.

First, Applicant has previously acknowledged, and does not contend, the well-established fact that Catherine Middleton is identified as Kate both by herself and the media. In addition, both Applicant and the Examiner agree that the term KATE, by itself, is too common a name, and too general to identify any specific living individual or institution. Finally, Applicant highlights the fact that the nickname Kate is a nickname that is available to other full names other than Catherine, namely Kaitlyn, among others, and a stand-alone name as well.

Second, Applicant disagrees that the media's sporadic (and incorrect) use of the moniker PRINCESS KATE suffices to achieve an association with Catherine Middleton that is so "uniquely and unmistakably associated with her as to constitute her name or identity". TMEP §1203.03; *In re Cotter & Co.*, 228 USPQ 202. In addition, Applicant disagrees with Examiner's inclusion of the aforementioned argument in support of its position in regards to the first prong of showing a false connection. Applicant contends that Examiner's application of this test to the first prong of false association is out of place.

With regard to the Examiner's contention that "the media's pervasive use of the term has created a widespread association of PRINCESS KATE with Kate Middleton", the Examiner cites *Buffett v. Chi-Chi's, Inc.*, 226 USPQ at 429; and *In re Sauer*, 27 USPQ2d 1073. The test the Examiner applies is whether the term is so uniquely and unmistakably associated with the named party as to constitute that party's name or identity. Applicant agrees that Examiner correctly cites the test to apply when a term is not the actual, legal name of the party, but maintains its unaddressed argument that such inquiry and analysis is not indicative or relevant as to whether the mark, in-and-of-itself, is a close approximation to the name or identity previously used by Catherine Middleton or another person or institution. In fact, this test from *Buffett v. Chi-Chi's Inc.* that the Examiner applies to this first segment of the analysis is in actuality the second prong of the *Buffet* test for a showing of a false connection under Trademark Act Section 2(a), and not the first prong as the Examiner contends.

The Examiner incorrectly interprets the decision of *Buffett v. Chi-Chi's Inc.* and mistakenly analogizes and applies such decision to the issue here. While the Examiner correctly states that the court in *Buffett v. Chi-Chi's, Inc.* based its ultimate decision, in part, on the fact that the public associates the term Margaritaville with the public persona of Jimmy Buffet, the Examiner mistakenly perceived this finding as relating to the first prong of the false connection analysis. However, the court in *Buffet* only reviewed public perception and association after it determined that the first prong had been adequately satisfied.

The part of the *Buffet* decision that is pertinent to the analysis at hand turns on different criteria. When discussing whether the mark sought to be registered was the same as, or a close approximation of, the name or identity previously used by another person or institution, the court in *Buffett* looked at several affidavits indicating that the exact proposed mark in question, Margaritaville, had been used in licensing agreements by Jimmy Buffett for the name "J.B.'s Margaritaville" for a restaurant, and for the sale of clothing bearing the term Margaritaville by Jimmy Buffett himself. The court found that these materials provided specific factual support for the opposer's allegations that the song "Margaritaville" and Buffett were well known. *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428. Whereas Jimmy Buffet used the term "Margaritaville" in commerce and entered into various licensing agreements utilizing such term, Catherine Middleton has not used the term "Princess Kate" in a commercial and/or individual capacity.

In an attempt to further distinguish the current facts from the ruling in *Buffett*, Applicant wishes to reiterate an unaddressed argument made in its appeal brief filed July 15, 2013. Such argument specifically states that Catherine Middleton, Duchess of Cambridge has never used the name PRINCESS KATE, as Jimmy Buffet or the media marketed, and promoted MARGARITAVILLE. In order to satisfy the first prong of the *Buffet* test, the mark in question would need to be a “close approximation” of a name or identity used by her or another person. Unlike a disparagement motion, which requires the mark be “reasonably understood as referring to” the identity of the opposing party, a “close approximation” test is a more stringent one, requiring a greater degree of similarity between the two designations.” *Boston Red Sox Baseball Club Ltd. P'ship v. Sherman*, 88 USPQ2d 1581 (TTAB 2008). In other words, a standard higher than whether or not a reasonable person would connect PRINCESS KATE to Catherine Middleton, Duchess of Cambridge must be met, while considering the mark, and the mark alone.

Moreover, the only additional arguments the Examiner makes in support of the contention that the proposed mark is a close approximation to the name or identity of Catherine Middleton, Duchess of Cambridge, is that Catherine identifies herself as KATE; Catherine impliedly uses her title and benefits of that of a Duchess, which is similar to the persona of a princess; and a thesaurus and an open-source online web-dictionary alludes that Duchess is synonymous with the attributes of a princess.

The Examiner contends that Kate is the actual name Catherine Middleton uses and the wording “Princess” added to the nickname Kate results in a close approximation to her name. The Examiner attempts to support this contention by citing *In re Sauer*, 27 USPQ2d 1073 (TTAB 1993), aff'd. 26 F.3d 140 (Fed. Cir. 1994), in which registration of BO Ball for oblong shaped leather ball with white stitching was properly refused under §2(a), since use of “Bo” would be recognized by purchasers as reference to football and baseball player Bo Jackson, and there was no connection between Jackson and applicant. However, the court in *Univ. of Notre Dame du Lac*, 703 F.2d 1375 commented on the *Sauer* case and stated, “[t]hat record is devoid of any evidence that Bo Jackson used the name Bo Ball. Indeed, a party's interest in a name or designation does not depend on adoption and use as a technical trademark or trade name.” Applicant acknowledges Examiner's elicited point from *In re Sauer*, that a single name, such as “Bo”, without any references to surname alone, is enough to establish a close approximation of one's

identity when in combination with a particular mark. However, Applicant argues that *In re Sauer* is quite distinguishable from our present case. Specifically, the court in *Sauer* goes on to say that the close approximation of Bo's identity was alluded to by the extremely unique characteristics surrounding Bo Jackson's claim to fame and the same exact characters present in the mark. For example, the sole reason Bo Jackson is well known is because he was an amazing professional athlete in not one, but two professional sports, namely football and baseball. In *Sauer*, it was but-for the combination of the unique design of the mark (a football with baseball stitches bearing the words Bo Ball), Bo's claim to fame, and Bo Jackson's prolific tendency to commercially exploit his nickname in connection with sporting goods and sporting goods memorabilia that led the court to hold that the mark sought to be registered was a close approximation to the name or identity of Bo Jackson. In the present case, the applied-for mark does not reference or allude to Catherine Middleton, her name, or her image because Catherine Middleton is not in the business of commercially exploiting any name and/or nickname she may possess. In addition, as stated above, the nickname Kate is a common nickname and does not specifically reference Catherine Middleton.

All four (4) prongs of the *Buffet* test must be met in order to satisfy a false connection under Section 2(a) of the Trademark Act.

“It is the Examining Attorney's burden to show that the mark sought to be registered is unmistakably associated with a particular persona. In order to do this, an Examining Attorney must show that the mark sought to be registered is the same or a close approximation of the name or identity of a person, living or dead or of an institution and that it would be recognized as such.”

*In re Cotter & Company*, 228 USPQ 202.

In the Examiner's appeal brief, the Examiner requests the Trial Board to take judicial notice of the definition(s) of the term “princess” and sets forth precedent which clearly specifies that, “the Trademark Trial and Appeal Board may take judicial notice of definitions obtained from dictionaries that (1) are available in a printed format, (2) are the electronic equivalent of a print reference work, or (3) have regular fixed editions.” TBMP §1208.04.

In light of the accepted standards mentioned above, Applicant respectfully requests that the Trial Board deny such request by the Examiner for judicial notice of the definition(s) provided by the Examiner in her appeal brief. The definition(s) furnished by the Examiner do not meet the criteria set forth in TBMP

§ 1208.04. In addition, the Examiner requests that the Trial Board take judicial notice of a Thesaurus and an open-source, electronic, website that does not have regular fixed editions or the equivalent of a print reference work.

Based on the definitions supplied by the Examiner, the Examiner offers as a supporting argument that the general public will conflate the terms “duchess” and “princess.” Applicant respectfully requests that the Trial Board disregard such argument offered by the Examiner considering that such argument is not supported by any evidence or precedent that would support a finding that the mark sought to be registered is the same as, or a close approximation of, the name or identity previously used by Catherine Middleton, Duchess of Cambridge, or another person or institution.

**REPLY TO EXAMINER'S APPEAL BRIEF IN REGARDS TO THE SECOND PRONG OF THE  
BUFFET TEST**

In order to satisfy the second prong of the *Buffet* test to establish a false association between the proposed mark and an individual, the Examiner contends that “PRINCESS KATE” would be recognized as a reference to Catherine Middleton because it points uniquely and unmistakably to her.

As stated above, Applicant's mark, “PRINCESS KATE”, is not the same or a close approximation of the name of a person or institution. As such, Applicant's mark does not point uniquely and unmistakably to Catherine, Duchess of Cambridge.

The Examiner’s sole argument in opposition of the proposed mark under this second prong of the *Buffet* test is that throughout the span of the last two (2) years the Examiner has found more than forty (40) articles that refer to Catherine Middleton as “princess Kate” within the media. While this argument may seem indicative that the mark “PRINCESS KATE” would be recognized as a reference to Catherine Middleton, it is anything but a reference that points uniquely and unmistakably to her.

Applicant’s immediate Google search for “Kate Middleton” and “Catherine Middleton” yields over one hundred and forty million (140,000,000) results. Forty (40) results that incorrectly label Catherine Middleton as “princess Kate” is hardly dispositive of a mark that points uniquely and unmistakably to her when considering the vast majority of articles on Catherine Middleton published. While the Examiner’s



appeal brief attempts to lead one to believe that many articles refer to Catherine Middleton as “princess Kate”, a closer look into any Google search results for “princess Kate” will reveal that this is not true.

On October 6, 2013 Applicant conducted a Google search for the term “Catherine Middleton” and has attached the first forty (40) articles appeared in the results of such search as Exhibit 1. Applicant respectfully requests the Board to review Exhibit 1 and take notice of several facts.

First, every article in Exhibit 1 references Catherine Middleton as “Catherine Middleton, Duchess of Cambridge”, “Duchess”, “Duchess of Cambridge”, “Catherine Middleton”, or “Kate Middleton”, and does not reference Catherine Middleton as “princess Kate.”

Second, several articles in Exhibit 1 reference members of the royal family, namely William, Eugenie, and Diana, and cites them as Prince William, Princess Eugenie, and Princess Diana, respectively. However, Catherine Middleton is mentioned in such articles as Catherine, Kate, and/or Duchess. At no point in such articles is Catherine's name ever prefixed with the word “princess.” Applicant contends that the media intentionally exercises a heightened degree of care when reporting about the royal family so as to not mislead readers or discredit the accuracy of their organization.

Applicant places strong emphasis on the point that not one single article in Exhibit 1 contains the phrasing or term “princess Kate”. Furthermore, every article contained in Exhibit 1 has been published within the thirty (30) days preceding October 6, 2013. Therefore, the Examiner's claim that the media is pervasively using the term “princess Kate” based on forty (40) articles spanning a two (2) year period, in a sea of millions of articles published on Catherine, Duchess of Cambridge, is misleading and an inaccurate means of establishing that the proposed mark is a reference to Catherine Middleton, Duchess of Cambridge. Catherine Middleton, Duchess of Cambridge, has neither used the term “princess Kate”, nor has she been portrayed as “princess Kate” by the general media.

Moreover, Google, like other search engines, uses titles, headings, subheadings, and metatags to retrieve articles. Such titles, headings, subheadings, and metatags are used for coding and search engine optimization purposes. At first glance it may appear that the Examiner's search results for “princess Kate” actually utilize the term “princess Kate.” However, the articles linked to such search results reveal that the term “princess Kate” is not included in the article itself. Each and every instance in which Catherine

Middleton's name appears in an article, it is associated with the title Duchess of Cambridge.

Not only does the term “princess Kate” not appear in the vast majority of articles discussing Catherine Middleton, Duchess of Cambridge, many articles clarify that Catherine Middleton is a Duchess and not a Princess in order to further dispel whatever confusion there may have been amongst the general public. After two (2) years of articles aimed at reinforcing Catherine Middleton's title as Duchess, and not Princess, Applicant contends that any association or perception of Catherine Middleton, Duchess of Cambridge as a princess will further dissolve.

**REPLY TO EXAMINING ATTORNEY'S APPEAL BRIEF IN REGARDS TO THE THIRD  
PRONG OF THE *BUFFET* TEST**

Applicant does not dispute that Catherine, Duchess of Cambridge, is not connected with the goods and/or services bearing Applicant's mark. Applicant does, however, maintain that the applied-for mark is not a reference to, nor does it have any connection with, Catherine Middleton.

**REPLY TO EXAMINING ATTORNEY'S APPEAL BRIEF IN REGARDS TO THE FOURTH  
PRONG OF THE *BUFFET* TEST**

As stated in Applicant's brief filed on July 15, 2013, Applicant does not dispute that Catherine, Duchess of Cambridge is a well-known figure. However, the Examiner relies solely on the fact that Catherine Middleton is so famous that any item, accessory, or piece of apparel she uses may be inferred as being connected with the proposed mark.

For the Examiner to establish the fourth prong of the *Buffet* test for false association, it is necessary for the Examiner to show that Catherine Middleton's fame or reputation is of such a nature that a connection with her would be presumed when the applicant's mark is used on its goods and/or services. The Examining Attorney fails to satisfy the fourth prong of the *Buffet* test in her appeal brief.

Applicant acknowledges that Examiner correctly states that the focus of this fourth prong is on “the initial reaction or impact of the mark when viewed in conjunction with the applicable goods or services”. However, Applicant disagrees with the Examiner's belief that Catherine Middleton has an

association with the makeup, clothing, luxury goods and home goods markets to the extent that consumers would presume that Applicant's mark is somehow connected to Catherine Middleton when used in connection with products of a similar nature.

Catherine Middleton is known for being a Duchess. The sensational media coverage she receives is first and foremost because of her title as such. The extensive media coverage she receives is neither associated with any single aspect of her life, nor is it limited to her fashion sense, or home design. Applicant cited several cases in the appeal brief filed July 15, 2013, that drew distinctions between a publicly recognized celebrity that is in the business of providing products, and is known for their involvement within in an industry, and those celebrities who are recognized in certain industries despite their non-involvement within that particular industry.

In this scenario Catherine Middleton is in tabloids and magazines not because of her style, but because of her status as a Duchess. Furthermore, the Examiner provides evidence of articles that feature stories on an enormous variety of styles that Catherine Middleton wears. For instance, Examiner references articles that depict Catherine Middleton ranging in outfits from “simple skinny jeans and a loose shawl” to “a dress by Jesire”. Not only do the articles mention the specific manufacturers of the clothing that Catherine Middleton is wearing, which would further alleviate any instances of consumer confusion, but they also find it noteworthy to report on “simple skinny jeans”. Catherine Middleton's association to style is not due to her involvement in the fashion industry, but rather a reflection of society's obsession with the everyday happenings of a Duchess.

The Examiner rebuts Applicant's prior argument in her appeal brief by stating that such facts are immaterial because Section 2(a) does not require the named person to produce or sell the relevant goods. If the applicant's goods and/or services are of a type that the named person sells or uses, and the named party is sufficiently famous, then it may be inferred that purchasers of the goods and/or services would be misled into making a false connection of sponsorship, approval, support or the like with the named party. *In re Cutter & Co*, 228 USPQ 202 (TTAB 1985).

Applicant does not contest the validity of Section 2(a) but draws attention to the degree of association that must be established between the fame of the named person and the goods they allege they

have a connection to. Unlike Bo Jackson in *In re Sauer*, Catherine Duchess of Cambridge does not have such unique and unmistakably identifiable styles, or attributes that would undeniably lead a consumer to associate a product bearing applicant's label with her.

Applicant further contends that people who follow Catherine Middleton will not be confused as to the true source of the goods. Due to the tremendous media coverage that follows every aspect of Catherine Middleton's life, a scenario where Catherine Middleton began her own fashion line would be so publicized that it would be hard to imagine anyone would be mistaken as to the true source of the mark.

### **CONCLUSION**

For the reasons stated above, the Examiner has failed to provide material evidence that all four (4) prongs of the *Buffet* test for false association have been satisfied. As demonstrated above, there is no evidence that the public will assume Applicant's goods bearing the mark PRINCESS KATE have any connection with the Catherine Middleton, the Duchess of Cambridge. Accordingly, Applicant requests the Trademark Trial and Appeals Board to support Applicant's opposition to Examiner's refusal of the proposed mark and reinstate the proposed mark for continuance of the application proceeding.

### **REPLY TO EXAMINING ATTORNEY'S APPEAL BRIEF PART TWO**

Applicant submits the following Ex Parte Appeal Reply, in accordance with TMBP §1203.02(c), to the Trademark Trial and Appeal Board in response to Examiner's Appeal Brief, filed September 17, 2013, by Examining Attorney Suzanne Blane of Law Office 114 ("Examiner").

### **FACTS**

As the Examiner sets forth in her brief, the following procedural history is uncontested by Applicant:

"On November 17, 2010, the Applicant filed an application under §1(b) of the Trademark Act for the mark PRINCESS KATE. On February 27, 2011, the Examining Attorney issued an Office Action requiring the Applicant to amend the classification and identification of goods and services and to clarify whether the name PRINCESS KATE identifies a particular living individual. On August 25, 2011, the Applicant submitted an acceptably amended classification and identification of goods and services along with a statement denying that the proposed mark

identifies a particular living individual. On September 7, 2011, the Examining Attorney approved publication for opposition of the proposed mark. On October 3, 2013, publication of the proposed mark was withdrawn because further review of the application found the proposed mark, PRINCESS KATE, may falsely suggest a connection with Catherine, Duchess of Cambridge, the wife of Prince William of England. In addition, a second refusal was issued under Section 2(c) because the proposed mark was found to consist of or include a name, portrait, or signature identifying a particular living individual whose written consent to register the mark is not of record.

On October 27, 2011, the Examining Attorney issued an Office action refusing registration of the proposed mark under Sections 2(a) and 2(c) of the Trademark Act. On April 26, 2012, Applicant submitted a response traversing both refusals. On June 30, 2012, the Examining Attorney issued a Final Office action making continuing and making final the refusal of registration of the proposed mark under Sections 2(a) and 2(c) of the Trademark Act. The Applicant subsequently filed a Notice of Appeal and Request for Reconsideration. The Request for Reconsideration was denied on May 18, 2013. The Applicant filed its brief on July 17, 2013.”

### **ARGUMENT**

A name is considered to identify a particular living individual for purposes of Section 2(c) only if the “individual bearing the name in question will be associated with the mark as used on the goods [or services], either because the person is so well known that the public would reasonably assume the connection, or because the individual is publicly connected with the business in which the mark is used.” *Martin v. Carter Hawley Hale Stores, Inc.* 206 USPQ 931.

In an effort to support an argument that Catherine, Duchess of Cambridge was in fact involved in the fashion industry, the Examiner references a 2010 article that highlights Catherine Middleton and Prince William's eight-year courtship. Within this article a small mention is included discussing Kate's work experience, which includes “a brief stint working as an accessories buyer for the clothing chain Jigsaw”.

Applicant is not satisfied with such an argument in support of Catherine Middleton's involvement in the fashion industry. A job alone in a specific industry will not avail one to the protection of section 2(c). The court in *Krause v. Krause*, Cancellation no. 92041171 USPTO, illustrated that an individual must be renown not only in the specific fields and within the industry they work but must also be recognized by the general public for their work within that given industry. Here, the record fails to establish that Catherine Middleton is well known for her work in the fashion industry, and fails to establish that the general public recognizes Catherine Middleton as a clothing designer or manufacturer.

Nonetheless, the Examiner continues to contend that the evidence demonstrates that Catherine

Middleton is well known in the relevant fields of applicant's goods, and the fact that clothing stores, fashion designers, and jewelry makers monitor what Catherine wears/uses establishes the renown of Catherine Middleton in those fields. Furthermore, it is not only designers and purveyors of such goods that follow what Catherine wears, but the general public as well. Therefore, Applicant maintains the contention that if Catherine Middleton's fashion and jewelry sense is so closely monitored and publicized, the risk of incorrectly associating the proposed mark with her is even further removed.

Due to the lack of conclusive evidence that would associate Catherine, Duchess of Cambridge to PRINCESS KATE, Applicant's proposed mark should be approved for publication. In this instance, where no conclusive evidence has been presented that the mark directly identifies a particular person or that the mark PRINCESS KATE would be associated by the general to be a close approximation to Catherine, Duchess of Cambridge, refusal to register the mark would stifle creativity and trade.

### **Conclusion**

Catherine, Duchess of Cambridge is as well known as any one in the world right now. Despite this fact, on September 7, 2011, the Examiner approved the applied-for mark for publication for opposition. If the Examiner believed that the mark would truly confuse the general public as to the source of Applicant's named goods, and the mark did so closely resemble such a world-famous living individual, it would surely have been immediately rejected. Applicant strongly believes the reason the mark was not originally rejected was because the proposed mark uses a common name and does not intuitively draw one to associate it with Catherine, Duchess of Cambridge, who does not, or has ever, gone by the identity PRINCESS KATE.

Applicant further contends that the mark does not satisfy the four prong test, as demonstrated in this brief. Moreover, applicant believes that the Examiner has misapplied the test, and has not supported her accusations with material evidence. In conclusion, Applicant believes the application should not be refused, and that the proposed mark has no association with the Catherine Middleton the Duchess of Cambridge.

Applicant respectfully request that the Appeal Board overturn the rejection and permit the continuation of process for application of the proposed mark.

## **TABLE OF AUTHORITIES**

*Boston Red Sox Baseball Club Ltd. P'ship v. Sherman*, 88 USPQ2d 1581 (TTAB 2008)

*Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985)

*Chester L. Krause v. Krause Publications, Inc.*, Cancellation no. 92041171 USPTO

*In re Cotter & Co.*, 228 USPQ 202

*In re Sauer*, 27 USPQ2d 1073

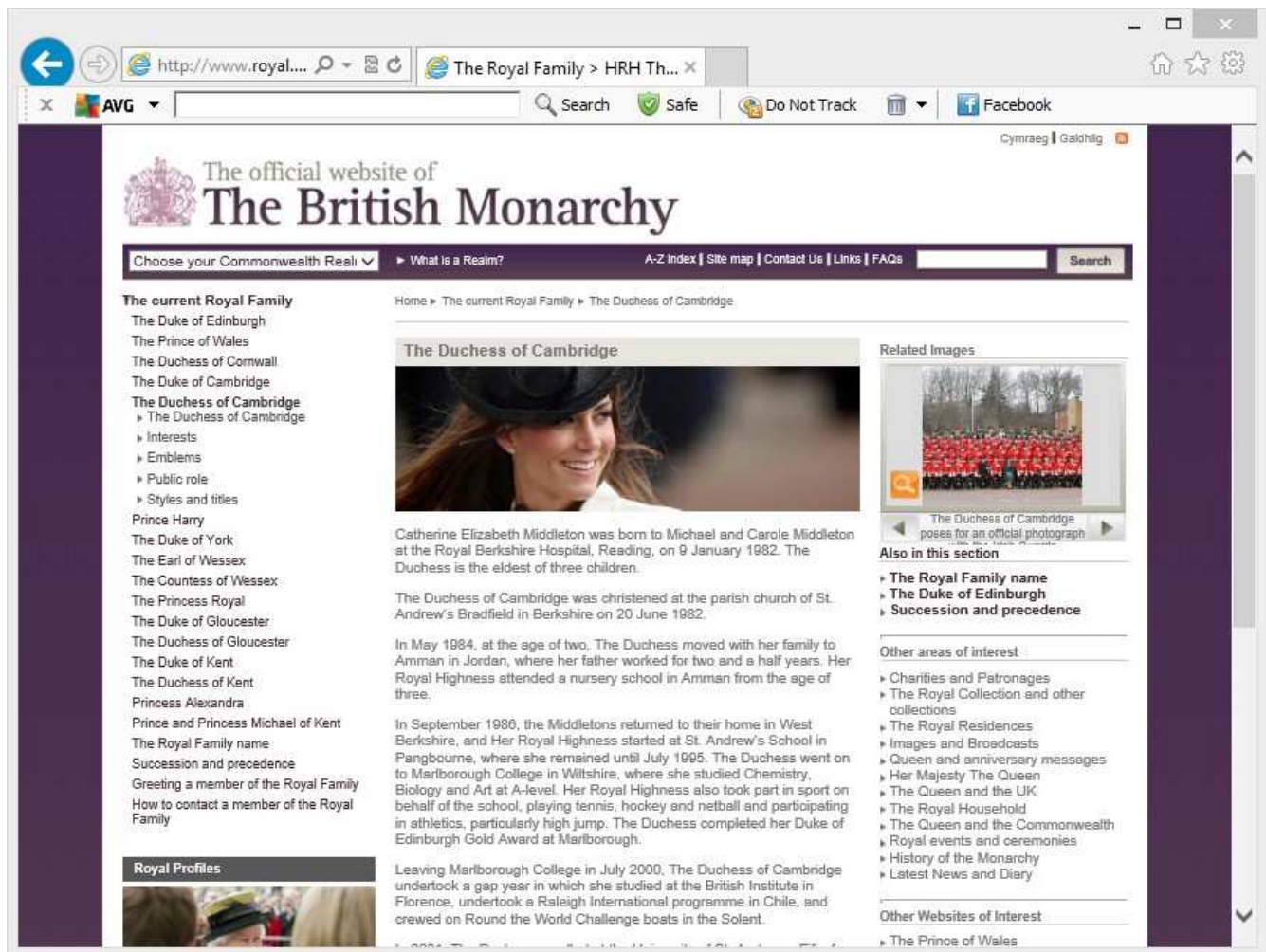
*Martin v. Carter Hawley Hale Stores, Inc.* 206 USPQ 931

*Notre Dame du Lac*, 703 F.2d 1375

TBMP §1208.04

Trademark Act Section 2(a) 15 U.S.C. §1052(a)

# Exhibit 1







Welcome to Catherine-Middleton.org, a site dedicated to **Kate (Catherine, Duchess of Cambridge)**. Currently we have over 1,000 photos, information on Kate, media, & more. I hope you enjoy your stay & come back within the future to see all the latest Kate news.

## Google Ad

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## Duchess of Cambridge attends The Tusk Conservation Awards

Posted By Kimberly - September 13th, 2013 in [Gallery Updates](#)

Prince William, Duke of Cambridge and Catherine, Duchess of Cambridge attend the Tusk Trust Conservation Awards at The Royal Society on September 12, 2013 in London, England.



### Gallery Links:

[Public Events > 2013 > Tusk Trust Conservation Awards \(Sept 12\)](#)

Comments Off

## Who's Kate?



Catherine "Kate" Elizabeth Middleton was born on Jan 9, 1982 in Reading, Berkshire, England. Kate attended St. Andrews School and later attend the University of St. Andrews in Scotland where she met her future husband, Prince William (Duke of

## Jenny Packham on designing Kate's Maternity Dress

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Welcome to **Catherine-Middleton.U.s**, the internet's leading source for **Catherine Middleton**, the duchess of Cambridge (*Kate Middleton*). Here we aim to provide you with everything on *Kate*, including the largest *Kate Middleton* gallery online, 24/7 news, media, video archive and much more. We also have a forum for fan interaction. Please visit back daily and contact us if you have any donations, questions or comments. Thank you for supporting the site and continuing to visit.

CATHERINE-MIDDLETON.US


*your largest source online for kate middleton*


Sep. 16th, 2013


ADDITIONAL TUSK CONSERVATION AWARDS PHOTOS


Filed Under: Gallery Addition

Thanks so much to Dianne at Richard Madden Online for donating over 100+ HQ photos of the Duke and Duchess at the Tusk Conservation Awards on September 12. Be sure to check them out!











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### Kate Middleton

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- Prince George Heads Home To London's Kensington Palace

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**Biography:**

Catherine Elizabeth Middleton was born on Jan. 9, 1982 in Berkshire, England to commoners Michael and Carole Middleton, who owned a mail-order business selling toys and games for children's parties. The eldest of three children, Middleton attended Marlboro College, an exclusive school in Wiltshire, England. Her former classmates described Middleton... [Continue Bio >>](#)


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everyone could have a little glam







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POSTED 19 DAYS AGO • BY KELLY LYNCH • 0 COMMENTS

Royal biographer, *Daily Mail* correspondent and *Vanity Fair* contributor **Katie Nicholl** released a new book today, detailing the **Duchess of Cambridge's** early life and relationship with **Prince William**, leading up to the birth of their son and heir to the British throne, **Prince George**.

*Kate: The Future Queen* goes back even before Catherine's January 1982 birth, giving readers background on the Middleton and Goldsmith (Carole's maiden name) family trees. Nicholl interviewed teachers and staff from St. Andrew's Preparatory school, Marlborough College and even St. Andrews University, where she was to fall in love with her prince.

"I try very hard to really bring the young royals to life and to uncover things that we never knew about them," Nicholl told me over the phone.

"Kate had met William at least once before university, having known some members of the '**Glosse Posse**,' (Nicholl's nickname for the Gloucestershire-based group of posh teens who were friends with William and Harry, whose father owns a house there).

"Two of her really good friends from Marlborough College lived in Gloucestershire, and because of that connection they knew William and Harry. I suppose it was inevitable that Kate was going to meet William through those close girlfriends, and

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Kensington Palace via Getty Images, Rex USA

There's a great alternative to the oh-so-cliché "Keep Calm and Carry On" posters everyone has these days: The Duke and Duchess of Cambridge's new family crest!

On Friday, Sept. 27, **Prince William** and **Kate Middleton**'s Conjugal Coat of Arms was unveiled to the public. The Cambridges' official emblem features William's Royal Shield, given to him by **Queen Elizabeth II** on his 18th birthday, and the **Middleton family shield**, which was granted to Kate's family before the royal wedding in 2011.

Will and Kate's individual family shields are supported by a royal lion and a unicorn. Per the palace's press release, the unicorn is wearing a collar featuring a red shell derived from the Spencer Coat of Arms. This is an homage to the late **Princess Diana**'s family and has been used on her side of the family for centuries.

#### PHOTOS: The perks of being a princess!

A Kensington Palace spokesman explained that the Conjugal Arms will belong to Will and Kate "forever," but as "their circumstances and roles" change, "elements of the accoutrements and the shields may change."

In addition to this Conjugal Coat of Arms, William and Kate will retain their own Coats of Arms "to represent themselves as individuals," the palace stated. Kate's individual seal features William's arms alongside her father **Michael Middleton**'s arms.

*Fancy. Commoners, feel free to join in the fun and create your own family shields!*

<http://www.eonline.com/news/467222/chris-brown-says-he-lost-his-virginity-at-8-years-...>

PHOTOS: Prince George's first few days



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HOMES

# Prince William and Kate Middleton's Wales home available for rent

The coastal cottage in Anglesey where the Duke and Duchess of Cambridge spent their first years as a married couple is reportedly up for rent. The new parents, along with baby Prince George, will be moving to an apartment in Kensington Palace.

BY VICTORIA TAYLOR / NEW YORK DAILY NEWS

TUESDAY, SEPTEMBER 17, 2013, 12:19 PM







Miley's vagina-wedgie pictures are by far the worst I've seen yet.



Jennifer Lawrence in Harper's Bazaar: "If anybody whispers the word diet, you can go f--- yourself!"



Chelsea Handler is single again!



Brad Pitt covers The Hollywood Reporter



Is the Duchess of Cambridge, [Kate Middleton](#) suffering from postpartum depression?? On July 22nd, she gave [birth to the future King](#), Prince George Alexander Louis — and now it appears that she's depressed.

According to a report from [Globe magazine](#), the Duchess is battling depression and has put off her plans to have another baby with [Prince William](#). A source said, "Kate is going through hell, but her husband and family have rallied to her side."

During her battle, the happy new parents are planning on taking the royal baby with them around the world. Recently, they applied for George's passport and are planning to take him on a family trip around the globe. We've also heard that the Queen needs to give special permission for the family of three to fly together on the same flight. For [Kate's an heir and the next in line should not fly](#)



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Celebrity Ranking # 39

## Kate Middleton Plans Visit with SportsAid Athletes

Posted Friday October 4, 2013 2:43 PM GMT



Looking to boost Britain's athletic prowess, **Kate Middleton** has announced her patronage of the SportsAid charity, and she's even paying a visit to the organization later this month.

According to a Kensington Palace source, the Duchess of Cambridge will attend the SportsAid workshop at the Copper Box in Queen Elizabeth Olympic Park on October 18th, marking her first official meeting.

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Photo Credit: Getty Images



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http://gossipcenter.com/kate-middleton/kate-middleton-plans-visit-sportsaid-athletes-937237

Prince George of Cambridge: Ready to be Christened

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### Prince William to Leave the British Military

By ALAN COWELL  
Published: September 12, 2013

LONDON — After more than seven years of service as a guards officer and pilot, Prince William will end his military service and focus on charitable work and conservation issues, the royal family announced Thursday.

[Enlarge This Image](#)



The announcement signaled a major lifestyle change for the prince, who is second in line to the British throne. His wife, the Duchess of Cambridge, the former Kate Middleton, [gave birth](#) on July 22 to the couple's first child, Prince George. Leaving the military would end the relative isolation of the couple's life on the Welsh island of Anglesey, where Prince William, who is also Duke of Cambridge, is serving as a helicopter search-and-rescue pilot.

Royal officials were quoted in the British media as saying that he planned a "transitional" year, and that he would make a formal announcement about his future role within 12 months.

The duke will work closely with a foundation he has established with his wife and with his younger brother, Prince Harry, an official [statement](#) said. "He will expand his work in the field of conservation, particularly in respect of

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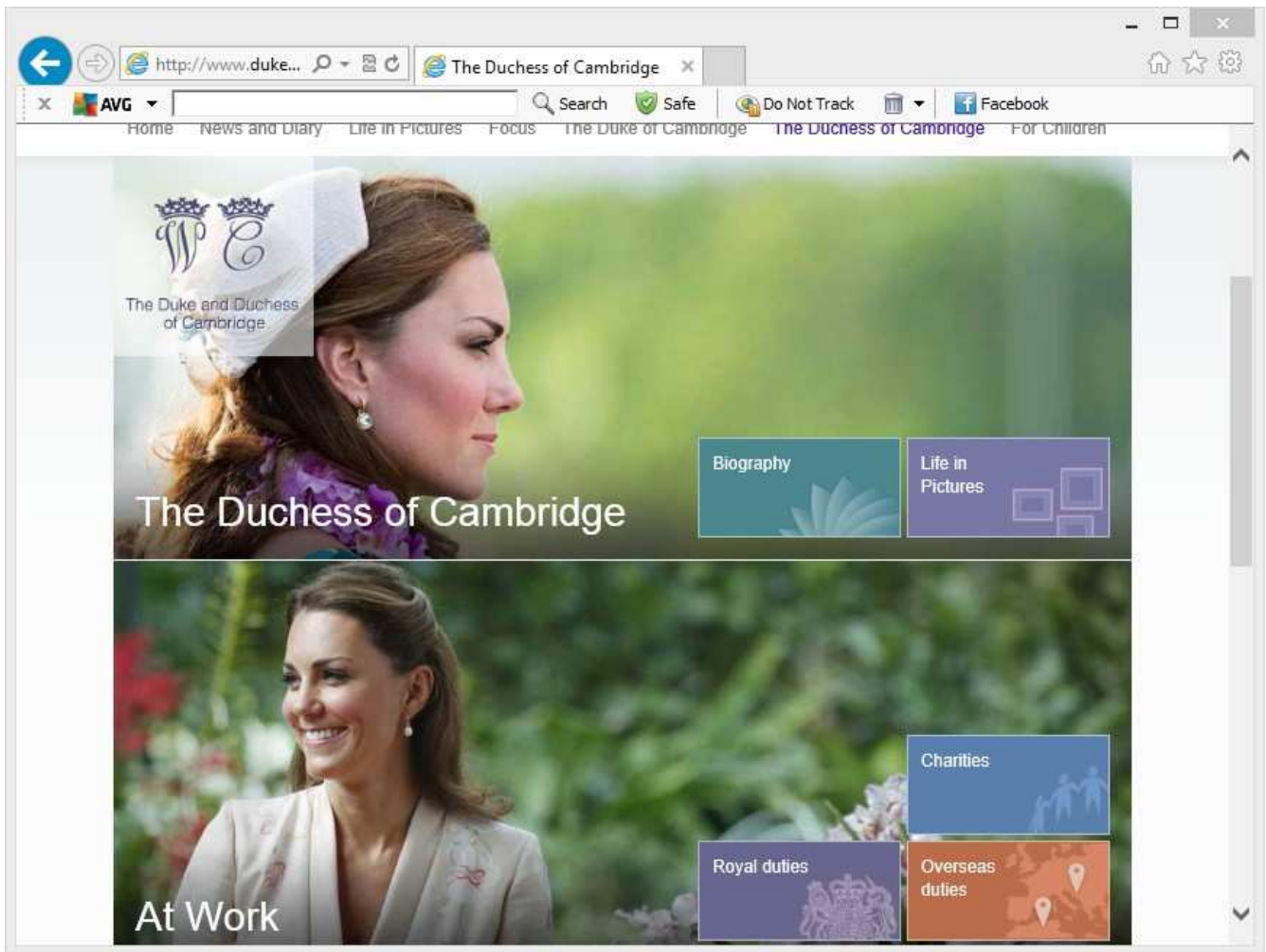
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HOT TOPICS / KATE MIDDLETON

All News Photos

# KATE MIDDLETON



AGE: 31 BORN: Jan. 09, 1982

We know her as **Kate Middleton**, but the wife of Prince William of Wales and the future princess of England is officially known as Her Royal Highness The Duchess of Cambridge.

In the only ceremony of the decade that could honestly be described as a "fairy-tale wedding," William married Kate on April 29, 2011 at Westminster Abbey in London, England. Some estimates put the TV audience for their nuptials at 2 billion. That's 4 billion eyes waiting to glimpse Kate's dress, and the gown did not disappoint.

Known for her keen sense of style, Kate's elegant and modern Sarah Burton gown impressed even the most snooty fashion critics and inspired knockoffs and replicas instantly. Alexander McQueen's Burton also

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## Kate Middleton, Prince William Take Prince George To Visit Prince Philip At Balmoral

The Huffington Post Canada | Posted: 09/17/2013 10:49 am EDT | Updated: 09/17/2013 1:11 pm EDT

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Britain's Prince William, Duke of Cambridge (R), and his wife Catherine, Duchess of Cambridge (L), attend the Inaugural Tusk Conservation Awards at The Royal Society in London on September 12, 2013. Prince William, patron of Tusk and his wife Catherine attended the awards that aim to celebrate achievement in the field of African conservation. It was announced earlier on September 12 by Kensington Palace that the second-in-line to the British throne, who became a father in July, is leaving Britai

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**FOLLOW:** Kate Middleton, Prince William, Video, Duchess Kate, DUCHESS OF CAMBRIDGE, Catherine Duchess of Cambridge, Prince George, Prince Philip, Royal Baby, Will And Kate, William And Kate, Canada Living News

Kate Middleton and Prince William have finally introduced Prince George to his great-grandfather, the last senior royal to meet the future king.

The Duke and Duchess of Cambridge took their infant son to meet Prince Philip, a.k.a. the Duke of Edinburgh, over the weekend at Balmoral Castle in Scotland, according to the Daily Mirror.

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posted by [Petra Guglielmetti](#)

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FRIDAY, 9/13/2013 AT 10:02AM | UPDATED ON SEPTEMBER 13, 2013

**Bored With Duchess Kate's Perfect Hair? Come See Her Perfect Pedicure for a Change**

posted by [Petra Guglielmetti](#)

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Kate Middleton

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A celebrity gossip mainstay since at least 2006, Kate Middleton is Prince William's lady friend. These two dated off and on for many...

**Kate Middleton or Kim Kardashian: Whose Post-Baby Body is Hotter?**

by Free Britney at October 2, 2013 6:20 pm

Kim Kardashian and Kate Middleton have lost the baby weight and look fantastic these days, just a few months after welcoming their famous offspring.

The celebrities had very different pregnancies, and have different post-baby bodies, but both look stylish and fresh. Motherhood clearly suits these two.

**Kate Middleton** gave birth to Prince George July 22, and within weeks her bump was almost gone. Her tall, lean figure is basically back to its fit, healthy norm.

**Kim Kardashian** gave birth to North West June 15, and kept to herself for a few months. Recently, she's gone public with her curvy, natural and familiar physique.

Which new mom's body do you think looks hotter? Vote!

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6 Ways To Fix Up Your Home In A Weekend Or Less

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# Prince William And Kate Middleton's Home In North Wales Is Reportedly For Rent

The Huffington Post | By Michele Manetti | Posted: 09/16/2013 12:33 pm EDT | Updated: 09/16/2013 12:59 pm EDT

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We don't get to say this very often... or ever actually, but now you can live like [Prince William](#) and [Kate Middleton](#).

According to the Telegraph, the couple's home on the Isles of Anglesey in North Wales is for rent. The Daily Mail reports that the farmhouse, where the couple has supposedly lived for the past three years, has four bedrooms, a dining room with french doors and amazing views of Snowdonia, a national park.

The two are reportedly leaving the modest abode and heading to their Kensington Palace apartment, which has undergone major renovations while preparing for their new bundle of joy, [Prince George](#).

[Head over to the Telegraph](#) and [the Daily Mail](#) for more information.

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Indigo/Getty Images; MODE/ANM-GSI

Wondering what the inside of [Kate Middleton](#) and [Prince William](#)'s love nest looks like? Well, wonder no more!

E! News has obtained photos of the royals' famous Anglesey home, which is [now](#)



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Home > Celebs > Kate Middleton

# Kate Middleton

**Also Known As:** Waity Katie, Commoner Kate, Her Royal Highness The Duchess of Cambridge



## Bio:

**Kate Middleton** (born Catherine Elizabeth Middleton in Berkshire, England on January 9, 1982) is the Duchess of Cambridge. She is married to Prince William, Duke of Cambridge, who is second in line to the throne of England. Kate studied at the University of St. Andrews in Scotland, where she met William. The couple became engaged in October 2010 in Kenya, after eight years of dating, and married at Westminster Abbey on April 29, 2011. William included his mother, the late Princess Diana, when he proposed to Kate with her sapphire ring. Kate, no stranger to the media, was dubbed a fashion icon when the world witnessed her exit the car in her now much-replicated wedding dress, designed by Sarah Burton for Alexander McQueen. Kate is often compared to the late Princess Diana for her grace, style, and how loved she is by the public.

## Best Known For:

Her fairytale marriage to Prince William and her chic, yet modest, style.

## Personal Life:

The media hassled Kate when she and William broke up for a short period of time in 2007, but rejoiced when the college sweethearts got back together shortly thereafter. Now, as husband

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**Date of Birth:** January 9, 1982

**Height:** 5'10"

**Hometown:** Berkshire, England

**In a Relationship With:**

Prince William

**Best Quotes:**

By far, the best dress I ever had was



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## Kate Middleton, Prince George & Prince William Family Vacation in Scotland [PHOTOS]; Passport Already for Duchess' Son?

By [Crystal Henderson, EnStars](#) | Sep 25, 2013 01:52 PM EDT

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## Will and Kate's First Post-Baby Date Night

The couple steps out for their 1st red carpet event since Prince George's birth.

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The Life and Times of Kate Middleton

1 of 125



Prince William, Duke of Cambridge and Catherine, Duchess of Cambridge attend the Tusk Conservation Awards at The Royal Society on Sept. 12, 2013 in London. (Danny E. Martindale/Getty Images)

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CAPTIONS 1/49

By Nardine Saad  
*This post has been corrected. See note below for details.*  
September 27, 2013 | 1:16 p.m.

Prince George's christening date has been set for Oct. 23, Kensington Palace announced Friday. That will make the son of Prince William and Catherine, Duchess of Cambridge -- born July 22 -- about 3 months old for the intimate ceremony in which his guardians will pledge to raise him in the Christian faith.

"Their Royal Highnesses The Duke and Duchess of Cambridge are pleased to announce the christening of Prince George will take place on Wednesday, 23rd October at The Chapel Royal, St. James's Palace," Kensington Palace said in a statement. "Prince George will be christened by The Archbishop of Canterbury, the Most Reverend Justin Welby."

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## KATE MIDDLETON

Kate Middleton met Prince William as a student at St Andrews University. Ten years later, she became Catherine, Duchess of Cambridge when they married at Westminster Abbey. The royal wedding was watched by millions around the world - and made a star of her younger sister Pippa

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### Kate Middleton 'asked for discount' at antiques shop claims owner

[Kate Middleton, Duchess of Cambridge](#)


Thrifty Kate, 31, is said to have haggled over the bill after going shopping while pregnant with baby George



### Donna Air horrified photos of her are being used on pro-anorexia websites


[Donna Air](#)

**OPINION**



#### Dinah Turner on Duchess Kate's fashion

*It was a brave look for a new mum but she made sure she got noticed on her first post-baby red-carpet bash*



#### Amber Graafland on Kate Middleton

*Motherhood clearly suits the Duchess - it's great to see her on top form. Her*

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### Kate Middleton makes first red-carpet appearance since birth of Prince George in slinky sequined dress

ASSOCIATED PRESS AND NATIONAL POST STAFF | 12/09/13 | Last Updated: 24/09/13 10:07 AM ET



Prince William, Duke of Cambridge (L), and his wife Catherine, Duchess of Cambridge (R), arrive to attend the Inaugural Tsak Conservation Awards at The Royal Society in London on September 12, 2013. [Liam Hall / GFF / Getty Images](#)

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On the same day Prince William announced he was leaving the military to focus on royal duties, the heir to the throne and his wife, Kate, made the couple's first black-tie appearance since the birth of their son.

Appearing at the Tsak Conservation Awards, honouring African conservation, the Duchess of Cambridge wore a slinky, sequined, floor-length gown from Jenny Packham, who also designed the ruffled dress Kate wore to leave the hospital with Prince

## The Duchess of Cambridge



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#### Prince George christening to take place next month

27 Sep 2013: Duke and Duchess of Cambridge's baby will be baptised by archbishop of Canterbury at St James's Palace in London

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Duchess of Cambridge makes first public appearance since giving birth - video (1min 16sec)

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27 Sep 2013: Duke and Duchess of Cambridge's baby will be baptised by archbishop of Canterbury at St James's Palace in London

#### William and Kate's new conjugal coat of arms is revealed



27 Sep 2013: New heraldic insignia is designed to represent Duke and Duchess of Cambridge as a married couple

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### Kate Middleton, Prince William Obtain Passport for Baby George Ahead of World Tour

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BY [BENGE NSENDULUKA](#), CHRISTIAN POST CONTRIBUTOR

September 26, 2013 | 10:02 am



(Photo: Reuters/Michael Middleton/The Duke and Duchess of Cambridge)

Britain's Prince William and his wife Catherine, Duchess of Cambridge, pose in the garden of the Middleton family home in Bucklebury, southern

Kate Middleton and Prince William recently obtained a passport for their newborn son, George Alexander Louis, ahead of their first international royal tour as a family, reports claim.

The Duke and Duchess of Cambridge welcomed the birth of their son on July 22 and at just nine weeks the newborn has been given his very first passport in preparation for a 2014 royal tour of Australia and New Zealand. The royal couple are believed to have spent \$76 for the passport which reportedly features the baby's full title as George Alexander Louis of Cambridge, according to [The Mirror UK](#).

"We are all very hopeful of coming to Australia next year," William told guests at the Anglesey show in Wales on Aug. 14.



SEPTEMBER 24, 2013



Source: Getty, Bauer-Griffin Online and Pacific Coast News Online

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**NEXT**



by Maria Mercedes Lara



## WHAT'S YOUR REACTION?



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8



4

Ever since Kate Middleton gave birth to Prince George, she and Prince William have been spending quality family time together. Most recently, they've been vacationing in Scotland, at Balmoral Castle, the queen's traditional vacation home. The Duke and Duchess of Cambridge are joined in Scotland by the queen, Prince Philip, Prince Charles, and Camilla, Duchess of Cornwall, as well as their newborn son, Prince George. With their latest holiday in mind, we're taking a look at the royal family's best off-duty moments — from slipping into bikinis on exotic vacations to hitting the polo field with their relatives and pals. Click through to see how Kate, William, Prince Harry, and the rest of the royals let loose when they aren't making official appearances.

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# ROCK IT FOR FALL

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X Factor 2013: Shock Results At Judges' Houses

BY SHAUN KITCHENER ON SEPTEMBER 30, 2013

## Kate Middleton, Prince William & Prince George of Cambridge To Move Into Kensington Palace Apartment 'Next Week'?

Renovation work is finally complete

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The Duke and Duchess of Cambridge, Kate Middleton and Prince William, are reportedly set to move into their new abode at Kensington Palace as early as next week.

The royal couple - complete with kingship-bound sprog Prince George - will therefore be all settled in their new residence in time for the big christening on October 23 at the Chapel Royal at St James's Palace.



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Kate Middleton

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Her Royal Highness The Duchess of Cambridge spent some time volunteering in Chile before starting university, helping with environmental programmes and a community project for disadvantaged children. Her future husband, [Prince William](#), had travelled to Chile to help with the same projects a year earlier.

The newly married couple have established the [Royal Wedding Charity Fund](#) to further support causes around the world.

Charities & foundations supported

Kate Middleton has supported the following charities:

BeatBullying

PeacePlayers International

Royal Wedding Charity Fund


Starlight Children's Foundation

Teenage Cancer Trust


Other supporters of the same charities & foundations

Syrian Child Crisis


[www.unicefusa.org/syria](#)





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
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
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## Kate Middleton, Duchess of Cambridge

Catherine Elizabeth "Kate" Middleton, born 9 January 1982, became HRH the Duchess of Cambridge when she married Prince William.

kate middleton profile »



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The Duchess of Cambridge went from being Prince William's flatmate to the future King's wife after their wedding on April 29, 2011.

The couple met at St Andrews University where they were both studying history of art, although William later switched to geography. Born on January 9, 1982, Catherine Elizabeth Middleton, known as Kate, is the eldest child of businessman Michael and former air hostess Carole Middleton.

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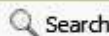
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# Kate Middleton, Prince William Attend Church, Leave Prince George With Nanny for Second Time

CELEBRITY NEWS SEPTEMBER 22, 2013 AT 2:30PM BY STEPHANIE WEBBER AND OMID SCOBIE



465



60



78



4



10



Prince William drove Catherine to a service at Crathie Kirk, Balmoral today. They were followed by Prince Charles and Camilla then The Queen and Prince Philip.  
Credit: Splash News

While Prince George stays at home, his royal parents will sneak out – to attend church! As Prince George stayed home with nanny Jessie Webb, Prince William and Kate Middleton were photographed heading to their local church for a service at Crathie Kirk, Balmoral on Sunday, Sept. 22. The royal first-time parents were joined by Prince Charles and Camilla as well as The Queen and Prince Philip. The trip marks the second time the couple have stepped away from the baby boy!

PHOTOS: Meet Prince George!

The Duchess of Cambridge, 31, wore tartan with a simple black hat as the Duke sported a suit for the service. The first-time mom looked effortlessly stunning with minimal makeup, while wearing her long brunette locks down for the low key morning outing.

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